

COMMISSION ON JUDICIAL PERFORMANCE
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JUDICIAL PERFORMANCE COMMISSION ISSUES
PUBLIC ADMONISHMENT OF FORMER JUDGE PAUL E. ZELLERBACH

The Commission on Judicial Performance has publicly admonished former Judge Paul E. Zellerbach of the Riverside County Superior Court.

The admonishment concerns the judge's engaging in a pattern of misconduct involving his failure to properly consider his ethical obligations while actively considering a run for nonjudicial office and in connection with his campaign for nonjudicial office.

In 2009, the judge was presiding over *People v. Holly Ann Gunnette*, a case involving a defendant who had served as treasurer for then-Riverside District Attorney Rod Pacheco's campaign for California State Assembly in 1996. During a hearing on March 18, 2009, the judge made comments about the district attorney's office "not doing their job properly" and referred to the executive division of the district attorney's office under Mr. Pacheco's management as a "PR firm." The commission found that the judge's statements would reasonably be perceived as bias or prejudice against District Attorney Pacheco and his office and as disparaging, undignified and discourteous in violation of canons 1, 2A, 3B(4), and 3B(5). The commission further found that Judge Zellerbach failed to disclose on the record at that hearing that he was actively considering running for district attorney against Mr. Pacheco. The commission found that disclosure was required in the *Gunnette* case because the defense was alleging that Mr. Pacheco had a conflict of interest in prosecuting the case. Under these circumstances, the commission found that a person knowing that Judge Zellerbach was actively considering a run against Mr. Pacheco might reasonably entertain a doubt about the judge's ability to remain impartial and that disclosure was required under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii) and canon 3E(2).

Judge Zellerbach was also admonished by the commission for his continuing to preside over criminal cases being handled by the district attorney's office until at least February 11, 2010, without disclosing on the record that he had decided to run and was seeking endorsements and other support for his campaign.

The admonishment also concerns the judge's presentation to the Riverside County Deputy District Attorney's Association on March 26, 2009, in which he recommended that the association wait to see who, besides Rod Pacheco, might run for district attorney before deciding whom to endorse. In so doing, the commission found that the judge engaged in political activity that may have created the appearance of political bias or impropriety and gave the appearance that he was opposing a candidate for nonjudicial office, in violation of canon 5 and canon 5A(2).

The admonishment notes that Judge Zellerbach was on leave from judicial office from February 25, 2010 until June 9, 2010, the day after he was elected Riverside County District Attorney. The commission also admonished the judge for allowing his judicial title to be used in a series of fundraising events, after he returned to judicial office, to solicit money from individuals to retire the debt from his campaign for district attorney. Judge Zellerbach was permitted under canon 6H to use his judicial title in his campaign while he was on a leave of absence, but once he returned to the bench, he was bound by the provisions of canon 2B(2), which prevent a judge from using the judicial title to advance the pecuniary or personal interests of the judge or others.

In determining to issue a public admonishment, the commission took into account the number of instances of misconduct and Judge Zellerbach's history of discipline. The judge was publicly admonished in 2006 for attending a baseball game while a jury was deliberating in a murder case and received an advisory letter in 2003 for harsh comments to a doctor who was late to court and threatening to hold him in contempt.

The public admonishment is available on the Commission's website at www.cjp.ca.gov (under "Press Releases" and "Public Discipline – 1960 to Present") and at the Commission's office.

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The Commission is composed of three judges, two lawyers, and six public members. The Chairperson is the Hon. Judith D. McConnell of the Court of Appeal, Fourth Appellate District, in San Diego, California.

For further information about the Commission on Judicial Performance, see the commission's website.